**IN THE HIGH COURT OF JUDICATURE OF BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

COMPANY PETITION NO.54 OF 1998

Maharashtra State Financial Corporation...Petitioner.

V/s.

M/s.Padode Communications P.Ltd. ..Respondent.

Mr.M.P. Rege i/b M.P.Rege & Co. for petitioner.

**CORAM: A.M.KHANWILKAR,J**

**DATE : SEPTEMBER 1, 2005.**

**P.C. :**

1. Heard counsel for the petitioner. None appears for the respondent company though respondent has been duly served.

2. According to the petitioner, petitioner has entered into an agreement for Short Term Loan for providing working capital to the respondent company dated 20th November, 1995. As per the demand under the agreement, petitioner extended financial facilities to the respondent company upto Rs. 200 Lakhs. The respondent company has availed of the said facility. Case of the petitioner is that as on 30th September, 1997, the outstanding principal amount which was due and payable by respondent company was in the sum of Rs.1,77,78,000/-.

3. As the amount was not received, petitioner sent statutory notice on 28th October, 1997, which was duly served on respondent company. In response to the said notice, respondent company sent reply on November 12, 1997 accepting its liability to pay; however, expressed inability to pay that amount due to financial difficulties. As no amount was received by the petitioner, present petition came to be filed on 21st December, 1997.

4. The respondent company filed reply to oppose the present petition. Amongst others, it was contended that the petitioner has been secured for the sum of Rs. 2 Crores by pledging shares of three companies of adequate numbers to the extend of four crores. It is further stated that due to unforeseen circumstances and market situation, respondent company was not in a position to discharge the obligations, though had sufficient assets to cover the liabilities. All these aspects were considered at the time of admission and negatived in order dated 1st December, 1998 being not bonafide. I have no reason to depart from the said conclusion. In as much as the outstanding principal amount which is to the extent of over Rs.1,77,78,000/- and accrued interest

thereon as on 20th November, 1997 was up to over Rs.75 Lakhs. At the time of filing of petition, outstanding amount receivable by the petitioner was to the extent of over Rs.2.22 crores. No efforts have been made by the respondent company to settle the dues of the petitioner during the pendency of this petition since 1997. The argument that the petitioner has been sufficiently secured by pledging shares, personal guaranties, Corporate guarantee, and securities of immovable properties, does not mean that the respondent is absolved from the liability to pay the amount to the petitioner under the agreement. The option of invoking guarantees and securities by the petitioner is always open, but that does not, as mentioned earlier, absolve the respondent of its obligations. The fact remains that the huge amount is payable to the respondent. As no efforts have been made by the respondent company to pay that amount nor respondent company has brought on record that the petitioners have already invoked special remedy under the provisions of State Finance Corporation, the only conclusion can be reached is that the respondent company is unable to pay its debt. Accordingly, this petition should succeed in terms of prayer clause (a) and (b).

5. Hence petition is made absolute in terms of prayer clauses (a) and (b).